

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

Under federal Medicaid legislation, a person who transfers assets for less than fair market value in order to meet Medicaid resource limits is penalized by a period of ineligibility for long-term care services that is proportional to the amount of assets transferred. In essence, this provision avoids Medicaid expenditures for services that the person could have purchased independently had the assets been retained or sold at fair market value.

Legislation applying the transfer of assets provision to the purchase of annuities was enacted in Public Law 109-171 and took effect on February 8, 2006. The law provides that the entire amount used to purchase an annuity shall be counted as a transfer of assets for less than fair market value unless certain conditions are met. One of these conditions is that the state is named as a residual beneficiary to the annuity. The original legislation was retroactively amended in December 2006 by Public Law 109-432. The Department’s medical assistance rules do not correctly reflect those changes.

The proposed amendment:

- Specifies that the residual beneficiary designation must apply to the extent of the amount of medical assistance paid for care of either the annuitant or the annuitant’s spouse in a medical institution, not just for the care of the annuitant.
- Provides that this restriction also applies to annuities for which the spouse of a Medicaid applicant or member is the annuitant. (Other conditions for exemption apply only when the Medicaid applicant or member is the annuitant.)

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before January 4, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code sections 249A.3 and 249A.4.

The following amendment is proposed.

Amend subrule 75.23(9) as follows:

75.23(9) *Purchase of annuities.* Funds used to purchase an annuity for more than its fair market value shall be treated as assets transferred for less than fair market value regardless of when the annuity was purchased or whether the conditions described in this subrule were met.

a. The entire amount used to purchase an annuity on or after February 8, 2006, with a Medicaid applicant or member as the annuitant shall be treated as assets transferred for less than fair market value unless the annuity meets one of the conditions described in subparagraphs (1) through (3) of this paragraph 75.23(9)“b” and also meets the condition described in subparagraph (4). paragraph 75.23(9)“c.”

b. To be exempted from treatment as an asset transferred at less than fair market value, an annuity described in paragraph 75.23(9)“a” must meet one of the following conditions:

(1) The annuity is an annuity described in Subsection (b) or (q) of Section 408 of the United States Internal Revenue Code of 1986.

(2) The annuity is purchased with proceeds from:

1. An account or trust described in Subsection (a), (c), or (p) of Section 408 of the United States Internal Revenue Code of 1986;

2. A simplified employee pension (within the meaning of Section 408(k) of the United States Internal Revenue Code of 1986); or

3. A Roth IRA described in Section 408A of the United States Internal Revenue Code of 1986.

(3) The annuity:

1. Is irrevocable and nonassignable;

2. Is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration); and

3. Provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(4) c. To be exempted from treatment as an asset transferred at less than fair market value, an annuity described in paragraph 75.23(9) "a" must have Iowa is named as the remainder beneficiary for at least the total amount of medical assistance paid on behalf of the annuitant or the annuitant's spouse, if either is institutionalized. Iowa may be named either:

1- (1) In the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or

2- (2) In the second position after the community spouse or minor or disabled child and in the first position if the spouse or a representative of the child disposes of any of the remainder for less than fair market value.

~~b. Funds used to purchase an annuity for more than its fair market value shall be treated as assets transferred for less than fair market value regardless of when the annuity was purchased or whether the conditions described in 75.23(9) "a" were met.~~

d. The entire amount used to purchase an annuity on or after February 8, 2006, with the spouse of a Medicaid applicant or member as the annuitant shall be treated as assets transferred for less than fair market value unless Iowa is named as the remainder beneficiary for at least the total amount of medical assistance paid on behalf of the annuitant or the annuitant's spouse, if either is institutionalized. Iowa may be named either:

(1) In the first position; or

(2) In the second position after the spouse or minor or disabled child and in the first position if the spouse or a representative of the child disposes of any of the remainder for less than fair market value.